

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

HELEN FRANZMAN,)	No. ED100312
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Richard C. Bresnahan
WYETH, INC., et al.)	
)	
Respondents.)	FILED: August 26, 2014

Helen Franzman (“Franzman”) appeals various trial court rulings dismissing her tort actions seeking damages for injuries sustained as a result of her prolonged use of the generic prescription drug metoclopramide. Metoclopramide, also sold under the brand name Reglan, is used to treat digestive problems including diabetic gastroparesis and gastroesophageal reflux disorder. Franzman was diagnosed with tardive dyskinesia secondary to Reglan/metoclopramide after using metoclopramide for three years. Although Franzman ingested only the generic form of the drug, she seeks damages from various parties responsible for disseminating information about the risks associated with long-term use of brand-name Reglan and generic metoclopramide. Franzman generally alleges that the manufacturers and sellers of the both brand-name Reglan and generic metoclopramide failed to reasonably and adequately warn of the risk of developing tardive dyskinesia with its long-term use. Franzman also seeks damages for her injuries from First Databank, Inc. (“First Databank”), a company that provided prescription drug information services to pharmacists and physicians and that disseminated information about metoclopramide.

The manufacturers and sellers of generic metoclopramide (“Generic Defendants”) filed a motion to dismiss arguing that all of Franzman’s claims against them are preempted by the Federal Food, Drug, and Cosmetic Act pursuant to the Supreme Court’s decision in PLIVA, Inc. v. Mensing, 131 S. Ct. 2567 (2011). First Databank filed a motion to dismiss Franzman’s claims on the grounds that that her claims against them were barred by the Kentucky statute of limitations. The manufacturers and sellers of brand-name Reglan (“Brand Defendants”) filed a motion for summary judgment on the ground that Franzman’s claims against them lacked the required legal causation because Franzman never ingested brand-name Reglan manufactured by them. The trial court granted all three motions and entered final judgment in the Defendants’ favor and against Franzman on all of her claims. Franzman now appeals.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

Division III holds: We reverse the trial court’s judgment in favor of the Generic Defendants with regard to Franzman’s claim that the Generic Defendants failed to update their warning labels. Because it was not impossible for the Generic Defendants to comply with their duties under Kentucky state law and to fulfill their duties under the FDCA by updating their label to conform to the 2004 Reglan label revision, that portion of Franzman’s failure-to-warn claim is not pre-empted under Mensing. Additionally, because the legal basis for Franzman’s claim is Kentucky product liability law, not federal law, her failure-to-warn claim is not impliedly preempted. We affirm the trial court’s judgment in favor of the Generic Defendants in all other respects.

We affirm the trial court’s grant of summary judgment in favor of the Brand Defendants because all of Franzman’s claims against the Brand Defendants fall within the broad definition of a

product liability action under the Kentucky Product Liability Act. Kentucky product liability law requires a plaintiff to show that the defendant's product is the legal cause of the injury. Because Franzman admits that she ingested only generic metoclopramide, she cannot prove the Brand Defendants' product is the legal cause of her injury, and her claims against the Brand Defendants fail as a matter of Kentucky law.

Lastly, we reverse the trial court's judgment in favor of First Databank. When Franzman discovered or should have reasonably discovered her legal injury, so as to trigger the Kentucky statute of limitations, is a question of fact not appropriate for resolution on a motion to dismiss. Accordingly, the trial court erred in finding Franzman's claims against First Databank barred by the statute of limitations and granting First Databank's motion to dismiss.

Franzman's claims against the Generic Defendants and First Databank are remanded for further proceedings consistent with this opinion.

Opinion by: Kurt S. Odenwald, J., Mary K. Hoff, P.J., and Angela T. Quigless, J., Concur.

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